



THE ATTORNEY GENERAL OF TEXAS

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October 15, 1975

The Honorable Royce C. Johnston
County Attorney
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P. O. Box 1226
Kingsville, Texas 78363

Opinion No. H-718

Re: Local option status of a
county which has never con-
ducted a local option election.

Dear Mr. Johnston:

You have requested our opinion concerning the wet-dry status of a county which has never held a local option election.

Article 16, section 20 of the Texas Constitution empowers the Legislature to provide for elections whereby the voters of various political subdivisions may "determine . . . whether the sale of intoxicating liquors for beverage purposes shall be prohibited or legalized. . . ." Article 666-23, Penal Auxiliary Laws provides that all areas which are not "dry" pursuant to a local option election shall be "wet". Thus neither the Constitution nor the statutory law would prohibit the sale of intoxicating liquor unless an area is "dry" pursuant to a local option election. It is well established that "no act or omission is a crime unless made so by the written law of the state." 16 Tex. Jur. 2d, Criminal Laws § 1, and authorities cited therein. Accordingly, in our opinion the sale of intoxicating beverages is illegal only in an area which is "dry" pursuant to a local option election. Where there has been no such election the sale of intoxicating beverages is not illegal and the area involved is therefore "wet".

We are supported in our view by dicta from two Texas cases. In Sanders v. State, 157 S.W.2d 910 (Tex. Crim. App. 1941), the court stated:

. . . under the terms of Art. 666-23, Vernon's Annotated Penal Code, all area of the state is 'wet,' except that which has been determined to be 'dry.' Unless the proof shows that the area is 'dry,' it is by law 'wet.'

The Honorable Royce C. Johnston, page 2

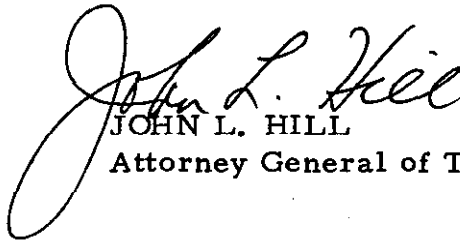
In Stell v. State, 496 S.W.2d 623 (Tex.Crim.App. 1973), the court stated:

Under the State Constitution . . . (Article XVI § 20, as amended 1933, 1935), all of the State is 'wet' except those parts which have been declared 'dry' by local option elections.


S U M M A R Y


Where a political subdivision has never held a local option election, the area it encompasses is "wet".

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee